

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

So ordered,
/s/ Alvin K. Hellerstein
Alvin K. Hellerstein
7/13/21

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In re AMERICAN REALTY CAPITAL	:	Civil Action No. 1:15-mc-00040-AKH
PROPERTIES, INC. LITIGATION	:	
	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
	X	

CORRECTED REPORT OF CLAIMS ADMINISTRATOR GILARDI & CO. LLP

Pursuant to the Court's April 19, 2021 Order (ECF No. 1333), the Declaration of Mishka Ferguson Regarding the Claim Administration Process and Remaining Disputed Claims is attached hereto as Exhibit A.

On June 30, 2021, the Claims Administrator, Gilardi & Co. LLP ("Gilardi"), certified to Class Counsel that it had completed the claims administration process and recommended distribution of the Net Settlement Fund to Class Members with validated and perfected claims. All told, Gilardi received 61,705 claims. Of the claims received, 26,878 are ineligible for inclusion in the distribution of the Net Settlement Fund for a variety of reasons, including but not limited to, deficient proof of a Class Period purchase or acquisition of the American Realty Capital Properties, Inc. ("ARCP") securities outlined in the Plan of Allocation; no Recognized Loss under the Plan of Allocation; or submission of a claim by an excluded party. In total 34,813 claims were validated and approved. Following exhaustive efforts, 14 claims remain in dispute as described below.

The settlement amount represents a recovery of more than 75% of claimants' losses. Gilardi will proceed to distribute the Net Settlement Fund, by August 31, 2021, to all claimants with valid and perfected claims. As permitted by the April 19, 2021 Order, Gilardi intends to take a reserve to account for the 14 disputed claims pending their resolution by the Court.

The small number of disputed claims all involve claimants who are current or former employees of ARCP who received Restricted Stock Units ("RSU") from ARCP in conjunction with their employment with the Company. The RSUs are subject to specific terms in written agreements entered into by the claimants with ARCP, and in the case of one claimant, as part of a settlement with ARCP. Gilardi has rejected these claims because:

1. The RSU grants were subject to vesting schedules and, for most claimants, none of the shares vested during the Class Period. The claimants, however, contend that the RSUs were

“otherwise acquired” during the Class Period as required by the Class definition on the grant date, irrespective of the vesting schedule, making them eligible for payment under the approved Plan of Allocation.

2. Even if the RSUs are considered eligible for consideration, the claimants received the RSU grants at a “purchase price” of \$0.00 which when the purchase price is incorporated into the Plan of Allocation formula, there is a \$0.00 Recognized Loss on these claims. The claimants, however, contend that the value assigned to the RSUs in the grant agreements should be designated the “purchase price” for use in calculating a Recognized Loss under the Plan of Allocation.

Gilardi has notified each of the 14 claimants that their disputed claims would be presented to the Court to determine whether the RSUs are eligible for payment under the Plan of Allocation, and if so, at what acquisition date and price. Counsel requests that the Court set up a procedure to review these disputes and suggests the following:

1. Concurrent with the submission of this Report, Counsel has provided to the Court, *in camera*, each disputed claim, the underlying documentation supporting each claim submitted by the claimants in support of their claims, and the correspondence between Gilardi and each claimant concerning the claims, and has served a copy of the submission on each of these disputed claimants;

2. By July 23, 2021, claimants provide to the Court additional information the Court requests, if any, to consider in its determination whether the RSUs are eligible for payment under the Plan of Allocation, and if so, at what acquisition date and price; and

3. If it would be helpful to the Court, it may wish to schedule a conference at the Court's convenience to review each disputed claim.

DATED: July 9, 2021

Respectfully submitted,

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Lead Counsel for Lead Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on July 9, 2021, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Debra J. Wyman

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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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_____	:	<u>CLASS ACTION</u>
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This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	X	

DECLARATION OF MISHKA FERGUSON REGARDING THE CLAIM
ADMINISTRATION PROCESS AND REMAINING DISPUTED CLAIMS

I, MISHKA FERGUSON, declare and state as follows:

1. I am a Vice President of Securities at Gilardi & Co. LLC (“Gilardi”), located at 1 McInnis Parkway Suite 250, San Rafael, CA 94903 (previously at 3301 Kerner Boulevard, San Rafael, CA 94901). I make this declaration based on personal knowledge, and if called to testify I could and would do so competently.

2. On June 30, 2021, Gilardi certified to Class Counsel that it had completed the claims administration process and had completed the administration tasks outlined in the April 15, 2021 Declaration of Mishka Ferguson Regarding the Claim Administration Process, Remaining Disputed Claims, and Remaining Administration Tasks (ECF No. 1332-1). Gilardi received 61,705 claims, and has validated 34,813 claims for payment from the Net Settlement Fund. There are 14 disputed claims, described below, that are being elevated to the Court for resolution.

3. Gilardi further recommended to Class Counsel that the Net Settlement Fund be distributed to the claimants with valid and perfected claims, and is prepared to make this distribution by August 31, 2021. Gilardi intends to take a reserve from the Net Settlement Fund to account for the 14 disputed claims pending the Court’s resolution of the disputes.

4. Attached to this Declaration as Exhibits 1-14 are the disputed claims, the underlying documentation supporting each claim submitted by the claimants in support of their claims, and the correspondence between Gilardi and the claimants concerning the claims:

Exhibits 1 - 11: Claimant received Restricted Stock Units (“RSUs”) from American Realty Capital Properties, Inc. (“ARCP”) in conjunction with claimant’s employment with ARCP, subject to a vesting schedule outlined in the written agreement between claimant and ARCP. Those RSUs were granted with no payment made by and at no cost to claimant, and did not vest during the Class Period. Gilardi rejected the claim on the RSUs because they were unvested during the Class Period,

and therefore were not “otherwise acquired” during the Class Period as required by the Class definition. Additionally, even if the RSUs were considered to be “otherwise acquired” during the Class Period as required by the Class definition, the purchase price was \$0.00 per share which when incorporated into the Court-approved Plan of Allocation results in a \$0.00 Recognized Loss. The claimant disputes this determination contending that the agreement designates a value per share for the RSUs, which should be used to calculate the Recognized Loss, and results in a compensable claim. Additionally, claimant contends that because the agreement confers all rights of ownership to the RSUs on the grant date, the RSUs were “otherwise acquired” on the grant date, not the vesting date.

Exhibits 12-13: Claimant received Restricted Stock Units (“RSUs”) from ARCP in conjunction with claimant’s employment with ARCP, subject to a vesting schedule outlined in the written agreement between claimant and ARCP. Those RSUs were granted with no payment made by and at no cost to claimant, and only a portion vested during the Class Period. Gilardi rejected the claim on the portion of the RSUs that were unvested during the Class Period because they were not “otherwise acquired” during the Class Period as required by the Class definition. Additionally, for the vested portion, the claim was rejected because the purchase price was \$0.00 per share resulting in a \$0.00 Recognized Loss. The claimant disputes this determination contending that the agreement sets forth a value per share for the RSUs, which should be used to calculate the Recognized Loss and results in a compensable claim. Additionally, claimant contends that the agreement confers all rights of ownership to the RSUs on the grant date, and as a result all the RSUs were “otherwise acquired” on the grant date, not the vesting date.

Exhibit 14: Claimant received RSUs from ARCP in conjunction with claimant’s employment with ARCP, subject to a vesting schedule outlined in the written agreement between the

claimant and ARCP. Those RSUs were granted with no payment made by and at no cost to claimant, and did not vest during the Class Period. Gilardi rejected the claim on the RSUs because they were unvested during the Class Period, and therefore were not “otherwise acquired” during the Class Period. Additionally, even if the RSUs were considered to be “otherwise acquired” during the Class Period as required by the Class definition, Gilardi rejected the claim because the purchase price was \$0.00 per share resulting in a \$0.00 Recognized Loss. Claimant entered into a second agreement with ARCP to settle certain employment related disputes, and received an additional grant of RSUs that, according to the terms of the settlement agreement, were immediately vested. Gilardi rejected the claim for the RSUs obtained through the settlement agreement because the purchase price was \$0.00 per share resulting in a \$0.00 Recognized Loss. The claimant disputes this determination contending that the grant agreement and settlement agreement set forth a value per share for the RSUs, which should be used to calculate the Recognized Loss, resulting in a compensable claim. Additionally, claimant contends that the grant agreement confers all rights of ownership to the RSUs on the grant date, and as a result the RSUs were “otherwise acquired” on the grant date, not the vesting date.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed this 9th day of July, 2021, at San Rafael, California.


MISHKA FERGUSON

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on July 9, 2021, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Debra J. Wyman

DEBRA J. WYMAN

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EXHIBIT 2

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EXHIBIT 3

[Filed Under Seal]

EXHIBIT 4

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EXHIBIT 5

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EXHIBIT 6

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EXHIBIT 7

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EXHIBIT 8

[Filed Under Seal]

EXHIBIT 9

[Filed Under Seal]

EXHIBIT 10

[Filed Under Seal]

EXHIBIT 11

[Filed Under Seal]

EXHIBIT 12

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